



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0166]

RIN 1625-AA00

Safety Zone; Spanish Navy School Ship San Sebastian El Cano
Escort; Bahia de San Juan; San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone on the waters of Bahia de San Juan during the transit of the Spanish Navy School Ship San Sebastian El Cano, a public vessel, and during their 21 gun salute in accordance with the military tradition of vessel proving that it is unarmed upon entrance into a foreign country. The safety zone is necessary to protect the public from the hazards associated with the 21 gun salute near the Bar Channel entrance, and to protect the high ranking officials on board the Spanish Navy School Ship San Sebastian El Cano. The inbound escort is scheduled to take place on Saturday, April 6, 2013, and will entail an escort of the Spanish Navy School Ship San Sebastian El Cano and 21 gun salute. The outbound escort is scheduled to take place on Wednesday,

April 10, 2013. The safety zone is necessary to ensure the safety of high ranking officials, commercial traffic, spectators, and the general public on the navigable waters of the United States during the transit and salute. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: This rule is effective from 8 a.m. on April 6, 2013, until 10 a.m. on April 10, 2013. This rule will be enforced from 8 a.m. until 9:30 a.m. on April 6, 2013, and from 8 a.m. until 10 a.m. on April 10, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0166]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Chief Warrant Officer Anthony

Cassisa, Sector San Juan Prevention Department, U.S. Coast Guard; telephone (787) 289-2073, e-mail Anthony.J.Cassisa@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive the request for an escort and safety zone nor a confirmed itinerary, from the Office of Puerto Rican Secretary of State with sufficient time to publish an NPRM

and to receive public comments prior to the event. Any delay in the effective date of this rule would be impracticable because immediate action is needed to minimize potential danger to high ranking officials and the general public.

Under 5 U.S.C. 553(d)(3), for the same reasons as above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

B. Basis and Purpose

On April 6, 2013, the Spanish Navy School Ship San Sebastian El Cano, a public vessel will be transiting in with high ranking officials to honor and return the remains of Captain Ramon Power y Giralte, a famous and respected Puerto Rican Navy Captain. The escort will be held on the waters of Bahia de San Juan, San Juan, Puerto Rico of the Spanish Navy School Ship San Sebastian El Cano, and will include a 21 gun salute near the Bar Channel entrance.

The purpose of the rule is to protect high ranking officials on board the Spanish Navy School Ship San Sebastian El Cano and the public from the hazards associated with the 21 gun salute over navigable waters of the United States.

The legal basis for the rule is the U. S. Coast Guard's authority to establish regulated navigation areas and other

limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

C. Discussion of the Final Rule

The safety zone encompasses certain waters of Bahia de San Juan, San Juan, Puerto Rico. The safety zone will be enforced from 8 a.m. to 9:30 a.m. on April 6, 2013, and from 8 a.m. to 10 a.m. on April 10, 2013.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port San Juan by telephone at (787) 289-2041, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative. The U. S. Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene

designated representatives.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) the special local regulation will be enforced for only one and a half hours on the first day, and two hours four days later; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within

the safety zone during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Bahia de San Juan encompassed within the safety zone from 8 a.m. until 9:30 a.m. on April 6, 2013, and from 8 a.m. until 10 a.m. on April 10, 2013. For the reasons discussed in the Regulatory Planning and

Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure

by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be enforced for a maximum of three and a half hours. This rule is categorically excluded, under, paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this

determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0166 to read as follows:

§ 165.T07-0166 Safety Zone, Spanish Navy School Ship San Sebastian El Cano escort, Bahia de San Juan; San Juan, PR.

(a) Regulated Areas. The following regulated area is established as a safety zone. All coordinates are North

American Datum 1983.

(1) Regulated Area. All waters within a 200 yard radius of the vessel Spanish Navy School Ship San Sebastian El Cano while the vessel is transiting within 1.5 nautical miles from the entrance of Bar Channel on approach or departure from San Juan Harbor. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan.

(b) Definition. The term "designated representative" means U. S. Coast Guard Patrol Commanders, including U. S. Coast Guard coxswains, petty officers, and other officers operating U. S. Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone, unless authorized by the Captain of the Port San Juan.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port San Juan by telephone at (787) 289-2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(3) The U. S. Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement Date. This rule will be enforced from 8 a.m. until 9:30 a.m. on April 6, 2013 and from 8 a.m. until 10:00 a. m. on April 10, 2013.

Dated: March 19, 2013

D. W. Pearson
Captain, U.S. Coast Guard
Captain of the Port San Juan

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Date: 03/29/2013]